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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No. 509

ALFRED SIDNEY BARTON

versus

THE PHELAN COMPANY

and

ROBERT L. PACE

versus

THE PHELAN COMPANY.

BRIEF OF DEFENDANT IN OPPOSITION TO PLAINTIFFS' APPLICATION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEAL OF THE FIRST CIRCUIT, STATE OF LOUISIANA.

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STATEMENT OF THE CASE.

Alfred Sidney Barton and Robert L. Pace brought suit against The Phelan Company in the Louisiana District Court (a court of general original jurisdiction) to recover damages for personal injuries received when the Ford V8

Sedan automobile in which they were riding collided with a Chevrolet truck with trailer, owned by The Phelan Company.

The principal question for decision was whose fault caused the accident, and as the physical facts in the case, supported by the testimony of several witnesses, showed that the Ford car in which Barton and Pace were riding left its proper side of the road—the South side—crossed over to its left or the North side of the road where the truck of The Phelan Company was travelling, and there collided with the said truck, the trial court held that the respondent was not at fault, and rejected the plaintiffs' demands.

Barton and Pace appealed the case to the Court of Appeal, First Circuit, Louisiana, a court which has appellate jurisdiction of both the facts and the law. Both the trial and appellate courts held that the collision did not happen through respondent's fault, both the trial and appellate courts finding that plaintiffs' car left its side of the road, and collided with respondent's truck, while it was well to its right of the road.

The appellate court discussed in detail the physical facts which showed that the collision took place on the respondent's side of the road, calling attention to the facts that the record showed that the brakes on the wheels of the truck were locked by the collision, and that as the truck was in motion at the time of the collision, the locked wheels skidded along the pavement, which was marked to such an extent by the skidding rubber tired wheels that a photo-

graph showing the skid marks was taken and introduced in evidence.

The record showed that the beginning of the skid marks was on the north of the defendant's side of the road, showing conclusively that the plaintiffs had left their side of the road, crossed over, and collided with respondent's truck when it was travelling on its proper side of the highway.

In affirming the lower court's decision in rejecting the plaintiffs' demands, the appellate court said:

> "The preponderance of the evidence is to the effect that the driver of the truck was travelling at a reasonable speed and on his line of travel (at the time of the accident)."

An application for a rehearing was refused by the Louisiana Court of Appeal, First Circuit, whereupon plaintiffs applied to the Supreme Court of the State of Louisiana for a writ of certiorari, which was refused, the State Supreme Court holding:

> "On the facts found by the Court of Appeal, the judgment is correct."

After this action by the Louisiana Supreme Court, counsel for the plaintiffs then sought from the United States Supreme Court a writ of certiorari directed to the Court of Appeal, First Circuit, State of Louisiana.

The only substantial ground alleged for granting the writ is that plaintiffs were denied due process of law in that the Louisiana courts arbitrarily disregarded plain-

tiffs' evidence, and this ground, it is here contended, is not supported by the record.

The record shows, in connection with briefs supporting this application, that plaintiffs seek to the Supreme Court a review of the Louisiana Courts' findings on disputed questions of fact.

ARGUMENT.

May It Please the Court:

I.

The Supreme Court is without jurisdiction in this case, because no Federal question is involved.

As ground for jurisdiction, the application for a writ of certiorari sets forth that due process of law was denied petitioners, because the trial and appellate courts of Louisiana made findings of facts without evidence to sustain such findings, and arbitrarily disregarded evidence introduced in behalf of the applicants for the writs.

In Louisiana the Court of Appeal reviews both findings of fact and of law made by the trial court, and in this case, Barton v. Phelan Co., Pace v. Same, Court of Appeal, Louisiana, First Circuit, *200 So. 508*, every finding of fact made by the Court of Appeal was amply supported by competent evidence, as is shown by a discussion of each reason urged by petitioners for the writ. (See subdivision III of this brief).

A decision of a state court upon a pure question of fact can not be reviewed by the United States Supreme

Court on a writ to the State Court. *Hallenbeck v. Leimert*, 295 U. S. 116; 79 L. Ed. 1339; 55 Sup. Ct. 687.

Mamouth Mining Co. v. Grand Central Mining Company, 213 U. S. 71; 53 L. Ed. 702; 29 Sup. Ct. 413.

Smiley v. Kansas, 196 U. S. 447; 49 L. Ed. 546, 25 Sup. Ct. 289.

II.

The issue of this case is not of public importance.

This is a suit for damages growing out of an automobile collision. It presents purely a question of fact, that is, whose fault caused the collision. No public or important question is involved in the case, and it is of importance solely to the litigants.

III.

No reason is given by counsel for Barton and Pace sufficient to justify the issuance by the United States Supreme Court of a writ of certiorari in this case.

A discussion of the various reasons urged by counsel for Barton and Pace in support of the application for writ of certiorari follows:

1. The plaintiffs' contention that there was want of due process of law because the Louisiana Court of Appeal rendered a judgment without any judicial determination of the facts which would support the judgment, is not supported by the record.

The judgment of the Louisiana Court of Appeal contains all findings of fact and law sufficient to sustain its decision.

The judgment of the Court of Appeal (Transcript of Record, Volume 2, page 386) shows that the court first made a statement of the case containing facts not in dispute; that it was the contention of the plaintiffs that respondent's truck, travelling on the north side of the highway, turned to its left and on to the south side of the highway in order to avoid striking a cow, and collided with the plaintiffs' automobile while it was on its proper side of the highway. The court then recited the contention of the respondent to the effect that the plaintiffs' automobile, in attempting to go around a cow crossing the road, turned off of its proper side of the road to its left, and while travelling at a high rate of speed, struck the cow and careened into the respondent's truck while said truck was on its proper side of the road, the collision causing the brakes on the left rear dual wheels of the truck to lock, and causing the truck to skid from the point of impact, on its side of the road, down the highway.

The appellate court quoted from the opinion of the trial court the latter's finding that:

> "at the time of the impact, Barton was on the wrong side of the road,"

and approved this finding of the trial court, saying:

> "A review of the record reveals that that conclusion (the finding of the trial court quoted) is correct." (Transcript of record, Volume 2, page 388).

The plaintiffs contended that the accident happened on the south side of the road, and in support of this contention they offered evidence as to the location on the highway of shattered glass, contending that the place where the glass was found was the place where the collision occurred. The Court of Appeal on this question said:

> "The evidence bearing on the question as to where shattered glass was found fails to convince us that the plaintiff has sustained the burden of proving that the shattered glass was on the south side and not the north side of the center strip." (Transcript, Volume 2, page 390).

The Court of Appeal in its judgment (Transcript, Volume 2, page 391) said:

> "It is our conclusion that the trial judge was correct in finding that the collision occurred on the north side of the center stripe (on the highway) and we fail to find that the plaintiffs' action in crossing over the center stripe was caused by any act of the defendant's (respondent's) truck driver. The preponderance of the evidence is to the effect that the driver was travelling at a reasonable speed and on his line of travel. It is not clear as to whether or not he had dimmed his lights, the plaintiff contending that he had not and the driver contending that he had; but admitting that the bright lights were on just prior to and at the time of the collision, that does not appear to have contributed to the accident. The most logical explanation of the accident is contained in statements of some of the occupants of the Barton car made on the night of the accident, to the effect that the plaintiff Barton tried to dodge a cow which was crossing the road and in doing so swerved to his left and into the truck. The physical facts support this testimony.

> "For the reasons set forth, we can not find manifest error in the lower court's conclusion of fact to the effect that the plaintiffs have failed to sustain the burden of proof in showing that the accident was caused by the negligence of the defendant's truck driver. The judgments are therefore affirmed."

It thus appears from the decision of the Court of Appeal that there was a finding of fact made by it, which showed that the plaintiffs were not entitled to recover, namely, that the accident took place on the respondent's side of the road; that the action of the plaintiffs in leaving their side of the road and striking respondent's truck when it was on its proper side of the road was not caused by any act of respondent's truck driver; that the accident occurred because the plaintiffs, in attempting to avoid striking a cow, swerved their car to their left and into respondent's truck while it was on its side of the road; and that the lower court's judgment, finding that the plaintiffs had failed to sustain the burden of proof by showing that the accident was caused by the negligence of the truck driver, was affirmed.

When the Court of Appeal found that the accident happened on the respondent's side of the road, and that respondent's truck driver in no wise caused the plaintiffs' automobile to leave its side of the road and run into respondent's truck, the Court of Appeal necessarily made a sufficient finding of fact upon which to base its judgment, for such finding was in effect a finding that there was no negligence on the part of respondent's truck driver.

No recovery can be had against respondent, of course, unless its truck driver was in some manner at fault.

Again, the Court of Appeal made a finding sufficient upon which to base its judgment when it held, as did the trial court, that the plaintiff had failed to sustain the burden of proof in showing that the accident was caused by the negligence of respondent's truck driver.

2. The plaintiffs' contention that there was want of due process of law because the Louisiana trial court and appellate court arbitrarily disregarded plaintiffs' testimony, is not supported by the record.

The opinion of the Court of Appeal shows that its judgment was based upon the testimony of witnesses, including some of plaintiffs' witnesses, supported by physical facts the interpretation of which can not be contested.

It is conceded that if there is substantial testimony from substantial witnesses on important points in a case, and no evidence to the contrary, a court which arbitrarily disregards such testimony violates the due process of law provision of the Federal Constitution, but that is not what happened in this case. Here, the testimony on the material question as to whose fault caused the accident was in conflict, and upon considering the record, which showed that some of the witnesses testified that the accident happened on the plaintiffs' side of the road, thus tending to show that respondent's truck driver was at fault, and other witnesses, corroborated by incontestable physical facts, testified that the accident happened on the respondent's side of the road,

thus establishing the fact that the plaintiffs were at fault, the court held that the plaintiffs had failed to sustain the burden of proof by showing that the accident was caused by the negligence of respondent's truck driver.

Since the plaintiffs' automobile, and respondent's truck were travelling toward each other on the highway when the collision occurred, it was important in order to determine whose fault caused the accident, to decide on whose side of the highway the collision occurred. Both the Louisiana trial court and Court of Appeal first made a finding of fact on that point, both holding that the collision occurred on respondent's side of the road.

This finding of the trial court was based almost entirely upon the physical evidence showing where the collision took place, and the same finding of the Court of Appeal was based on this physical evidence corroborated by the testimony of witnesses. Skid marks made by the wheels of respondent's truck appeared on the highway, beginning on the north or respondent's side of the highway, and running some distance down the highway on the north side, and on the south side of the road. Both courts found that the collision caused a jamming of the brakes and the locking of the wheels of the truck, and that the locked wheels skidding on the pavement caused the skid marks. Two of plaintiffs' witnesses, Blackley (Tr. 167) and Hicks (Tr. 245), and three witnesses for respondent, Wallace (Tr. 30), Brown (Tr. 108) and Lafosse (Tr. 107), all testified that the left rear driving wheels of the truck were locked in the collision. Brown (Tr. 100), Vandegriff (Tr. 287), Parker (Tr. 343) and the plaintiffs' witness Blackley

(Tr. 165) all testified that the accident happened on the truck driver's side or the north side of the road.

Both of the plaintiffs, Barton and Pace, and two of their witnesses, Bailay and Donahoo, at a time not suspicious, signed statements showing that the plaintiffs claimed the accident happened because they turned their car to the left or to the north side of the road in order to go around a cow which they struck and then ran into the respondent's truck. (Tr. 51, 52, 53). The plaintiff Pace made the same explanation to Dr. Gray shortly after the accident. (Tr. 267).

The plaintiffs sought to show that the accident happened on the south side of the road, and therefore that respondent's truck driver was at fault in leaving his side of the road and running into plaintiffs' automobile, and plaintiffs contended that glass found on the highway was found on the south side of the highway at the point of collision. The Court of Appeal discussed the testimony of six of plaintiffs' witnesses on this question, naming the witnesses, and showed why it was their testimony did not establish by a preponderance of the evidence that shattered glass was found on the south or plaintiffs' side of the highway. These witnesses were Hicks, Donnehoo, Hoskins, Blackley, Lanier and Bass.

The appellate court then discussed the testimony of other witnesses, which it believed, showed that there was shattered glass on the highway from the point where the skid marks began, on the north or respondent's side of the road, and along the highway for some distance. As an additional ground for holding that the shattered glass did

not first appear on the south side of the highway, the Court of Appeal said other evidence, including the physical evidence of the beginning of the skid marks, showed that the collision occurred on the north or the truck driver's side of the highway.

Since the testimony of plaintiffs' own witnesses, and written statements signed by the plaintiffs themselves, as well as an admission by one of the plaintiffs, would have been sufficient to sustain a judgment for respondent, without regard to the other oral testimony and the physical evidence in the case supporting respondent's contention, it can not be held that the Louisiana courts arbitrarily disregarded the plaintiffs' evidence, and thus denied them due process of law.

3. The plaintiffs' contention in their third reason in the application for a writ, to the effect that the Fourteenth Amendment to the Federal Constitution, against depriving one of his property or liberty without due process of law "extends to all acts of the state, whether through its legislature, its executive or its judicial authorities," is correct, but has no application to this case.

4. The contention of the plaintiffs in their fourth reason why the writ should be granted, to the effect that the motives of courts in rendering a decision must be determined by the effect of their decision, is correct, but plaintiffs' contention that the motive of the Louisiana courts, in rendering their judgment in this case, was bad because the Louisiana courts arbitrarily disregarded the plaintiffs' testi-

mony, is not sustained by the record, as is shown by the discussion herein under plaintiffs' second reason for the issuance of the writ.

5. The contention of the plaintiffs in their fifth reason for the issuance of the writ, that the defendant is bound by admissions in its answer, is correct. Plaintiffs' further contentions that respondent admitted any liability in its answer, that the respondent admitted facts tending to show negligence on the part of respondent's truck driver, and that respondent admitted in its answer facts which showed that respondent created an emergency in which plaintiffs were compelled to act, are not correct and are not borne out by the record.

The defendant (respondent) in its answer denied all alleged acts of negligence, made absolutely no admissions of any nature whatsoever in its answer, and in its affirmative defense made no allegations showing or tending to show negligence on the part of the defendant, or showing or tending to show that defendant created any emergency in which the plaintiffs were caused to act.

The answer of respondent, which is found at page 11, Volume 2 of the Transcript, in its first paragraph, denied every allegation of the petition except those allegations which might be specifically admitted.

In paragraph 24 of the answer it was especially denied that respondent's truck driver swerved to the left to avoid hitting a cow, although it was admitted in para-

graph 26 of the answer that respondent's truck driver saw the cow on the highway and could have stopped his truck had there been any danger of striking the cow, and it was especially alleged that no such danger presented itself.

In Paragraph A of the answer, at page 15, Volume 1 of the Transcript, the defendant (respondent) made the allegation that the plaintiffs' automobile attempted to pass the cow on the right of the automobile and the truck on the left of the automobile, and that in so doing the plaintiffs' automobile struck the cow and skidded into the left rear or drive wheels of the truck.

These allegations in respondent's answer neither show nor tend to show any negligence on the part of the truck driver.

There is nothing in the record to show that the respondent is responsible for the stray cow crossing the highway, and the record does show that respondent's truck slowed down and allowed the cow to pass safely in front of it.

Respondent's truck driver, of course, was not responsible for the fact that plaintiffs did not comply with their plain duty and stop or slow down and allow the cow to cross the road ahead of them.

If there was any emergency created at the point of the collision, it was created by the failure of the driver of the automobile to comply with his legal obligation to slow down or stop and avoid running into the cow. Certainly respondent's truck driver had nothing to do with

the plaintiffs leaving their side of the road, driving on to respondent's side of the road, and crashing into respondent's truck.

The Court of Appeal specifically held that the truck driver was not liable for acts of the driver of plaintiffs' automobile in leaving plaintiffs' side of the road, in violation of the rule of the road, and running into respondent's truck when it was on its proper part of the road.

The Louisiana Supreme Court, in denying a writ of certiorari to the Court of Appeal in this case, in effect said that on the findings of fact made by the Court of Appeal, its decision on the law was correct. The highest court in the state having thus decided there was no legal responsibility on the part of respondent for the action of the driver of plaintiffs' car in travelling on the wrong side of the highway and causing the collision, establishes the law of this state, which is binding on the United States Supreme Court.

The error into which plaintiffs' counsel has fallen is in assuming that respondent's truck driver is liable for damages caused by the plaintiffs in trying to avoid an emergency created by the plaintiff who was driving their automobile.

6. In the sixth reason for granting of writ of certiorari, plaintiffs contend that the Court of Appeal failed to discuss the vital points of the case and the testimony of witnesses thereon; that said Court placed great emphasis upon matters of no impor-

tance; that the decision gave great weight to the testimony of one witness, whose testimony was allowed to overcome the testimony of seven other witnesses, and that the case was decided without a fair and full consideration of the facts.

The record does not show that the Court of Appeal decided the question as to where shattered glass was found on the highway on the testimony of the one witness, LaFosse.

The Court's opinion shows by its analysis of the testimony of witnesses for the plaintiffs, who testified on the subject of the location of the shattered glass, that it was not sufficient to establish the location of the shattered glass.

Moreover, the Court of Appeal specifically stated that its finding on this subject was based not only on the testimony of LaFosse, as against the uncertain and unsatisfactory testimony of other witnesses, but was based upon its well established prior finding that it was abundantly shown otherwise that the collision took place on the truck driver's side of the road.

As pointed out previously in this brief, the record contained abundant evidence to show that the collision took place on the truck driver's side of the road, and that he was not guilty of any negligence. This being true, it cannot be correctly said that the judgment of the Court of Appeal is a mere edict and without facts to justify it.

7. In the seventh reason for the issuance of the writ, plaintiffs urge that if this Court should grant a writ of certiorari to review a case which was decided arbitrarily and without facts to support it, such action by this Court would discourage such decisions in the future.

As an abstract proposition this contention is correct but it has no application to this case.

8. In the eighth reason for the issuance of the writ of certiorari, plaintiffs contend that the physical fact of the skidding of respondent's truck from its side of the highway should not be held conclusive evidence that the collision took place on the truck's side of the highway, where four eye-witnesses testified the collision took place on the south side of the highway, and that the Court of Appeal failed to give any weight to testimony offered by the plaintiffs on this subject.

As shown by respondent in its discussion of the second reason for the granting of the writ, the Court of Appeal did not decide the question as to where the accident took place solely on the physical facts of the truck's skid marks.

As noted above, three defense witnesses and one of plaintiffs' witnesses testified that the accident happened on the truck driver's side of the road, and both of the plaintiffs and one of plaintiffs' witnesses signed statements to

the effect that plaintiff's automobile turned to the left, struck a cow, and hit the respondent's truck on the north side of the road.

It seems that the real contention made by counsel for the plaintiffs on this question is that the Louisiana courts made an error in deciding a question of fact.

9. In this reason urged by the plaintiffs for granting of a writ, it is contended that the United States Supreme Court may properly read the record and consider all of the testimony in these cases to determine the Federal question herein presented.

The respondent admits that the United States Supreme Court may properly read the record in these cases but only for the purpose of determining whether or not there was any substantial evidence justifying the findings made by the Louisiana courts, it being elementary that the United States Supreme Court will not review the findings of a state court on pure questions of fact. (See citations under discussion of Subdivision I of this brief).

10. In the tenth reason for issuance of the writ, plaintiffs contend that the evidence in these cases does not show negligence on the part of the plaintiff, Pace, which caused or contributed to his injuries; that the Court of Appeal made no finding in terms that Pace was guilty of any negligence; and that the Court of Appeal made no finding as to negligence on the part of the plaintiff, Barton, causing the accident.

What the Louisiana courts found in these cases was that respondent's truck driver was not guilty of any fault in connection with the accident.

After first finding that the accident happened on the truck driver's side of the road, the Court (Tr. 391) held:

> "* * * we fail to find that plaintiff's action in crossing over the center line was caused by any act of the defendant's truck driver."

In the closing paragraph of its decision, the Court of Appeal held:

> "We cannot find manifest error in the lower court's conclusion of fact to the effect that the plaintiffs have failed to sustain the burden of proof in showing that the accident was caused by negligence of defendant's truck driver."
> (Tr. 392).

The Court of Appeal thus decided as a matter of law, from the facts it found, there was no negligence on the part of the truck driver.

In Louisiana one without fault cannot be held liable for damages sustained by another.

Civil Code, Article 2315, reads in part:

> "Every act of man whatever that causes damages to another obliges him by whose fault it happened to repair it * * *."
> *Davis v. Shaw, 142 So. 301.*

Conceding for the sake of argument that the plaintiff, Pace, who was a guest in the automobile driven by

Barton, was nowise in fault in the accident, his remedy is not against the one who was an innocent victim of the collision, the respondent, but his remedy is against the man whose fault caused the accident, in this case, his co-plaintiff, Barton.

The decision by the Court of Appeal that there was no negligence in this case on the part of respondent's truck driver, in itself, necessitated a decision in favor of the respondent.

When the Court of Appeal in this case found that the accident was caused by the plaintiffs leaving their side of the road and running into respondent's truck on its side of the road, it necessarily found that the driver of the plaintiffs' automobile caused the accident through his fault and negligence. There was no necessity, however, for the Court of Appeal to use language in this finding specifically saying that the driver of the said automobile was negligent. At any rate it was sufficient for the Court of Appeal to find, as it did, that the respondent's truck driver was not negligent.

Since a finding of both law and fact on an issue decisive of the case was made by the Court of Appeal, there was no want of due process on the ground that the Court's judgment was a mere edict.

11. In this reason for issuance of the writ plaintiffs' contention that under the law of Louisiana, the defense of contributory negligence must be alleged and established by a fair preponderance of the evidence, is a correct statement of the law. The

further contention in this assignment that there was no negligence or contributory negligence on the part of the plaintiffs is correct as to the plaintiff, Pace, a guest in the automobile, but as has been shown it is not correct as to the plaintiff, Barton.

12. The contention of plaintiffs in their twelfth assignment of reason for issuance of the writ, to the effect that the judgment of the Court of Appeal violated the equal protection and due process of law provisions of the Federal Constitution in that it did not decide all points in controversy between the parties and did not refer to the law or give reasons for its judgment, is not correct.

There is no Federal Constitutional requirement that Louisiana courts give reasons or cite the law upon which their decisions are based.

The record shows that the Court of Appeal decided the respondent's truck driver was not at fault in the accident, and a decision of that point put an end to the controversy.

In view of the facts that the Court of Appeal wrote six and one-half pages of typewritten matter on legal size paper, detailing its findings and giving reasons therefor, it can not be said that the Court of Appeal gave no reasons for judgment.

If the Louisiana courts have not followed the requirements of the Louisiana law as to recitals in their

judgments, that is a matter which is not the subject of jurisdiction of the United States Supreme Court.

This Court has never held that the failure of a state court to make recitals in its judgment, required by state law, constitutes a denial of due process of law guaranteed by the Federal Constitution.

There was a compliance by the Louisiana appellate court with all requirements as to recitals in its judgment.

The *Louisiana Code of Practice, Article 539*, reads:

> "Definitive or final judgments are such as decide all the points in the controversy between the parties."

The language quoted has reference to trial courts only. (See Part II, Title I, Louisiana Code of Practice, Article 124).

Moreover, the language quoted means that only controversies necessary for a decision of the case need be decided.

In this case both the trial court and the Court of Appeal decided respondent's truck driver was not at fault. Since that was true, it would have been a vain thing for the courts to have held in so many words, though they did so hold in effect, that plaintiff Pace, the guest in Barton's car, was not guilty of negligence, or that the plaintiff Barton was guilty of negligence.

When the Court of Appeal, in its opinion, said the trial court:

> "decided the case in effect on the point the defendant's (respondent's) truck driver was not guilty of negligence,"

and then affirmed that decision, that constituted a sufficient reference to the law.

Again, when the appellate court found that

> "the plaintiffs have failed to sustain the burden of proof in showing that the accident was caused by negligence of the defendant's truck driver,"

that was a finding of the law sufficient to dispose of the case.

Under Article 7, Section 1, of the Louisiana Constitution of 1921, reading in part

> "* * * The judges of all courts shall refer to the law and adduce the reasons under which every definitive judgment is founded",

it is not required that the Court refer to any particular decision, statute or law. It is quite sufficient if it appears from the decision that it is rendered in accordance with the law.

Harris v. Pickett, 37 La. Ann. 741.

13. The plaintiffs correctly state the law in their thirteenth reason for the issuance of the writ of certiorari to the effect that the United States Supreme Court has the power under the due process of law and equal protection of the law provisions of

the Federal Constitution to protect an injured litigant from the effects of a purely arbitrary judgment not supported by law or facts.

However, as shown, this abstract proposition of law has no application to this case.

CONCLUSION.

This Court has no jurisdiction to issue writ of certiorari in this case on the ground that the plaintiffs were denied due process of law by the State court based on the contention that the State court arbitrarily decided this case without regard to plaintiffs' evidence and with no evidence to support its findings, the record showing that the evidence abundantly supported the judgment of the appellate court.

This case properly presents only one issue, and that is whether the judgments of the State courts were correct. That is a matter of no importance to the public, or to anyone except the litigants, and for that additional reason the writ of certiorari should not issue.

Respectfully submitted,

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